

PROB. 12B  
(7/93)**ORIGINAL**FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII**United States District Court**

for the

**DISTRICT OF HAWAII**MAY 08 2007  
at 10 o'clock and 58 min.  
SUE BEITIA, CLERK**Request for Modifying the Conditions or Term of Supervision  
with Consent of the Offender***(Probation Form 49, Waiver of Hearing is Attached)*

Name of Offender: VAN DUONG

Case Number: CR 04-00146SOM-03

Name of Sentencing Judicial Officer: The Honorable Susan Oki Mollway  
U.S. District Judge

Date of Original Sentence: 10/28/2004

Original Offense: Count 2: Conspiracy to Distribute and Possess With Intent to  
Distribute 50 Grams or More of Methamphetamine, in violation of  
21 U.S.C. §§ 841(a) and 841(b)(1)(A), a Class A felonyOriginal Sentence: As to Count 2 of the Indictment, the defendant is hereby committed  
to the custody of the United States Bureau of Prisons to be  
imprisoned for a total term of 37 months to be followed by 5 years  
supervised release with the following special conditions: 1) That  
the defendant participate in a substance abuse program, which  
may include drug testing at the discretion and direction of the  
Probation Office; and 2) That the defendant provide the Probation  
Office access to any requested financial information.Type of Supervision: Supervised Release Date Supervision Commenced: 12/22/2006**PETITIONING THE COURT**☒ To modify the conditions of supervision as follows:

- 3) Van Duong shall abstain from the use of alcohol during the entire period of his supervision.
- 4) Van Duong, as a condition of supervision, shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer, pursuant to 18 U.S.C. § 3583(d).

**CAUSE**

The offender is not in violation of his conditions of supervised release. The Central District of California (CD/CA) has been supervising the offender since his release from a ninety (90) day term of incarceration at an ICE processing center in San Pedro, California, on 3/26/2007. CD/CA policy requires that individuals who have a drug testing order abstain from the use of alcohol. Furthermore, based upon the offender's history of substance abuse, and in order to comply with U.S. v. Stephens, 9<sup>th</sup> Circuit 2005, we are recommending that the offender's conditions be modified as reflected above. The additional conditions are needed to continue to promote effective community-based supervision. The offender has agreed to the modified conditions.

As to the offender's adjustment to supervision, a report from the CD/CA indicates that analysis of a substance abuse test submitted on 4/16/2007 was found to contain alcohol, in violation of the conditions of the drug testing program at Detection and Treatment Resources (DTR). As a result, the offender was placed in Life Skills counseling at DTR and is required to attend at least two Alcoholics Anonymous meetings a week for the next 8 weeks. The CD/CA reports that the offender is in compliance with all other supervision terms and conditions, and recommends that the Court take no formal action at this time and that these violations be held in abeyance.

This report also serves to inform the Court that the CD/CA will accept a transfer of jurisdiction. This transfer will expedite any future matters that may require Court intervention. Should the Court concur with the request to transfer jurisdiction in this case, Your Honor's signature is requested on both originals of Probation Form 22, Transfer of Jurisdiction.

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The offender waives his right to a hearing and to assistance of counsel. The offender agrees to the modifications of the conditions of supervised release. The offender's attorney and the U.S. Attorney's Office have been notified of the proposed modifications and have no objections to the modifications.

Respectfully submitted by,



KEVIN S. TERUYA  
U.S. Probation Officer

Approved by:



GENE DeMELLO, JR.  
Supervising U.S. Probation Officer

Date: 4/30/2007

---

THE COURT ORDERS:

- ☒ Concur with Recommendation (Your Honor's signature is also requested on the two original attached Probation Forms 22 for the transfer of jurisdiction.)
- ☐ Other

  
\_\_\_\_\_  
SUSAN OKI MOLLWAY  
U.S. District Judge

5/4/07

\_\_\_\_\_  
Date

PROB 49  
(3/89)

## United States District Court

\_\_\_\_ District \_\_\_\_ of Hawaii \_\_\_\_

### **Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision**

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

Van Duong shall abstain from the use of alcohol during the entire period of his supervision.

Van Duong, as a condition of supervision, shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer, pursuant to 18 USC 3583(d).

Witness   
U.S. Probation Officer

Signed   
Probationer or Supervised Releasee

4/3/07  
Date